**IN THE HIGH COURT OF KERALA AT ERNAKULAM**

**PRESENT :**

**THE HONOURABLE MR. JUSTICE K.BALAKRISHNAN NAIR**
**&**
**THE HONOURABLE MR. JUSTICE T.R.RAMACHANDRAN NAIR**

**THURSDAY, THE 4TH OCTOBER 2007 / 12TH ASWINA 1929**

**WP(C).No. 20378 of 2007(S)**
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**OA.854/2005 of CENTRAL ADMINISTRATIVE TRIBUNAL,ERNAKULAM BENCH**
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**PETITIONERS:**
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1. **THE KENDRIYA VIDYALAYA SANGATHAN, NO.18, INSTITUTIONAL AREA, SHAHEED JEET SINGH MARG, NEW DELHI, REPRESENTED BY ITS SECRETARY.**

2. **THE DEPUTY COMMISSIONER (ACAD), KENDRIYA VIDYALAYA SANGATHAN, NO.18, INSTITUTIONAL AREA, SHAHEED JEET SINGH MARG, NEW DELHI.**

3. **ASSISTANT COMMISSIONER, KENDRIYA VIDYALAYA SANGATHAN (DELHI REGION), JNU CAMPUS, NEW MEHRAULI ROAD, NEW DELHI-67.**

4. **THE PRINCIPAL, KENDRIYA VIDYALAYA, SECTOR VIII, ROHINI, NEW DELHI.**

5. **THE JOINT COMMISSIONER (ADMN.), KENDRIYA VIDYALAYA SANGATHAN, NO.18, INSTITUTIONAL AREA, SHAHEED JEET SINGH MARG, NEW DELHI.**

**BY ADV. SRI.V.V.ASOKAN, SC,KENDRIYA VIDYALAYA**

**RESPONDENTS:**
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1. **THE KENDRIYA VIDYALAYA NON TEACHING STAFF ASSOCIATION, REP. BY ITS GENERAL SECRETARY- SRI. C.S.PREM, LOWER DIVISION CLERK, KENDRIYA VIDYALAYA NO.II, NAVAL BASE, KOCHI-4, RESIDING IN CHIRAMEL HOUSE, KOOTUNGEL LANE, KOCHUPALLY ROAD, THOPPUMPADY, KOCHI-5.**

**2. T.A.ARUMUGHAN, S/O. CHATHAPPAN,
GROUP D EMPLOYEE, KENDRIYA VIDYALAYA,
UP HILL, MALAPPURAM, RESIDING AT KENDRIYA
VIDYALAYA, SANGATHAN QUARTERS NO.2/4, UPHILL,
MALAPPURAM-676 505.**

**BY ADV. SRI.T.C.GOVINDA SWAMY**

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 04/10/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

**WP(C) NO: 20378/2007**

**APPENDIX**

**PETITIONER'S EXHIBITS**

**EXT.P1. COPY OF THE CIRCULAR BY P2 TO ALL THE CONCERNED OFFICERS OF THE KENDRIYA VIDYALAYA SANGATHAN DT. 29/09/99.**

**EX.T.P2. STATEMENT OF ARTICLES OF CHARGES FRAMED AGAINST SRI. S.S. DAHIYA DT. 1/11/2001.**

**EXT.P2A. COPY OF THE INQUIRY REPORT BY SRI. B. DASGUPTA DT. 30/09/02.**

**EXT.P2B. COPY OF THE LETTER OF APPOINTMENT OF SRI. K.K. BHATT TO ENQUIRE INTO THE CHARGES AGAINST SRI. S.S. DAHIYA DT. 26/6/03.**

**EXT.P2C. COPY OF THE ORDER REJECTING THE APPEAL FILED BY SRI. S.S. DAHIYA DT. 17/6/2004.**

**EXT.P3. COPY OF THE REPRESENTATION BY THE R1 BEFORE THE P3 DT. 8/11/2005.**

**EXT.P4. COPY OF THE COMMUNICATION BY THE P3 TO THE R1 DT. 2/12/2005.**

**EXT.P5. COPY OF THE ORDER OF THE CAT ERNAKULAM BENCH IN OA NO. 854/05 DATED 20/3/07.**

**RESPONDENT'S EXHIBITS NIL.**

*True copy*

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K.BALAKRISHNAN NAIR &

T.R.RAMACHANDRAN NAIR, JJ.

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W.P.(C) NO. 20378 OF 2007-S

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Dated 4th October, 2007.

JUDGMENT

Balakrishnan Nair, J.

The petitioners are the respondents in O.A.No.854/2005 before the Central Administrative Tribunal, Ernakulam Bench. The said O.A was filed by the applicants, who are the respondents herein, challenging Annexure-A6 amendment, which is produced as Ext.P1 in this writ petition. By the said amendment, Clause 5(e) of the KVS (Recognition of Service Associations) Regulations, 1995 was amended by adding an explanation to it. After the amendment, the said clause reads as follows:

> "Employees who are in service shall be members or office bearers of the Service Associations.
>
> (Explanation: An employee under suspension shall not be eligible to be member or office bearer of the Service Association during the period of suspension)."

The applicants felt aggrieved by the explanation added, which prohibits a

suspended employee from being a member or office bearer of a Service Association. According to them, the said clause infringes their fundamental rights under Article 19(1)(c) of the Constitution of India. The C.A.T upheld the challenge and allowed the O.A., by Ext.P5 order dated 20.3.2007. The respondents before the C.A.T have filed this writ petition, challenging the said order, mainly on the ground that the Tribunal has no jurisdiction to deal with the challenge to the aforementioned clause.

2. We heard the learned counsel on both sides. The right to form Unions or Associations is a fundamental right guaranteed under Article 19 (1)(c) of the Constitution of India. A suspended employee continues to be a citizen of India and therefore, the fundamental right to form a Union or Association cannot be denied to him. Further, the services of the union are required by an employee when he is facing disciplinary proceedings and pursuant to the said proceedings he is suspended from service. So, it is irrational also to deny membership to such persons. The prohibition of a suspended employee against his continuance as office bearer of the Association is also arbitrary and unjust. The appointing authority, by virtue of the amended provision, can remove the office bearer of an association from office by suspending him from service. Normally, the activists of Trade Unions are confronted with several disciplinary proceedings. If the

above clause is allowed to stand, the same will result in annihilation of their fundamental rights under Article 19(1)(c).

3. Further, a suspended employee continues to be an employee of the organisation. Denial of membership to him in the Association will amount to plain discrimination, which is prohibited by Article 14 of the Constitution of India.

4. Therefore, we are of the view that the impugned explanation quoted above is ultra vires of the powers of the rule making authority. The framers of the parent statutory provision cannot be held to have intended to confer power to frame such arbitrary rules. Further, as held above, the said explanation violates the fundamental rights of the employees under Articles 14 and 19(1)(c). If that be so, even assuming the Tribunal has no jurisdiction to render Ext.P5, we need not interfere with the said order, in view of the decision of the Apex Court in **Mohd. Swalleh v. IIIrd Addl.Dist. Judge, Meerut [**(1988)1 SCC 40]. In the said decision, the Apex Court held as follows:

> "7. It was contended before the High Court that no appeal lay from the decision of the Prescribed Authority to the District Judge. The High Court accepted this contention. The High Court finally held that though the appeal laid (sic no appeal lay) before the District Judge, the order of the Prescribed Authority was invalid and was rightly set aside by the District

> Judge. On that ground the High Court declined to interfere with the order of the learned District Judge. It is true that there has been some technical breach because if there is no appeal maintainable before the learned District Judge, in the appeal before the learned District Judge, the same could not be set aside. But the High Court was exercising its jurisdiction under Art.226 of the Constitution. The High Court had come to the conclusion that the order of the Prescribed Authority was invalid and improper. The High Court itself could have set it aside. Therefore in the facts and circumstances of the case justice has been done though, as mentioned hereinbefore, technically the appellant had a point that the order of the District Judge was illegal and improper. If we reiterate the order of the High Court as it is setting aside the order of the Prescribed Authority in exercise of the jurisdiction under Art.226 of the Constitution then no exception can be taken. As mentioned hereinbefore, justice has been done and as the improper order of the Prescribed Authority has been set aside, no objection can be taken."

In view of the above decision, even assuming the order of the Tribunal is without jurisdiction, this Court need not interfere with the same, as justice has been rendered by issuing Ext.P5 order. Accordingly, the writ petition fails and it is dismissed.

**K.BALAKRISHNAN NAIR, JUDGE**.

**T.R.RAMACHANDRAN NAIR, JUDGE**.

Nm/